

No. 9(1)82-6Lab/11620.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947(Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Comee Fruits Products, Kunjpura Road, Karnal.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

References No. 39, 41, 42 and 43 all of 1980

between

THE WORKMEN S/SHRI SHIA RAM, RAM GOPAL, RAHBIR RAJ PAL AND THE MANAGEMENT OF M/S COMEE FRUITS PRODUCTS, KUNJPURA ROAD, KARNAL

Present :

No one for the workmen.

Shri Surinder Kaushal, for the management.

AWARD

This award shall dispose of references No. 39, 41, 42 & 43 all of 1980 which were received in this court,— vide orders of the Hon'ble Governor No. ID/KNL/21-80/10779, ID/KNL/22-80/10791, ID/KNL/25-80/10773, and ID/KNL/26-80/10743, dated 28th February, 1980, in exercising the powers conferred by clause (c) of sub-section (1) of section 10 of the I.D. Act, 1947, for adjudication of the dispute existing between Sarvshri Shia Ram Ram Gopal, Rahbir and Raj Pal and the management of M/s. Comee Fruits Products, Kunjpura Road, Karnal. The term of the reference was :—

Whether the termination of services of the workman was justified and in order ? If not, to what relief are they entitled ?

On receipt of the orders of references notices as usual were sent to the parties. The parties appeared in response, to the same on 21st May, 1980. The parties filed their respective pleadings, on the basis of which the following issues were framed :—

- (1) Whether the reference is not maintainable in view of the agreement u/s 12(3) of the I.D. Act ?
- (2) Whether the applicant is estopped from raising the dispute by his own act and conduct ?
- (3) Whether the respondent concerned is not covered under Factory Act and as such the reference is not maintainable ?
- (4) As per reference.

The management was asked to adduce their evidence. The management examined Shri Jagdish Lal, Head Clerk, O/O Labour Officer, Panipat and Shri Avinashi Ram son of Shri Sajjan Shih, Partner respondent, as their witnesses and closed their case. All the four references numbering 39, 41, 42 & 43 all of 1980 were consolidated by my order dated 23rd February, 1982, as the common question of facts and law were involved there in with further order that evidence and further proceedings were to be recorded in file no. 39 of 1980 the same were to be read in all other cases. The workman examined Shri Sukh Ram son of Shri Khem Ram o Bhagat Mandi, Karnal, Shri Ram Gopal, workman concerned and Shri Rahbir, workmen concerned, as their witnesses and the case was fixed for remaining evidence of the workman. The evidence of the workman was not present on two occasions and the case of the workman was closed on 24th July, 1982 as I did not consider it justified to grant any further opportunity as the workman had obtained six adjournments for their evidence. The case was fixed for arguments to be heard on 27th August, 1982, but no one appeared on behalf of the workmen and I heard the learned representative of the management in the absence of the workman and I decide the issues as under.

Issue No. 1.—The management has taken objection that the workmen have executed an agreement with the respondent under section 12(3) of the I.D. Act and hence the present references are not maintainable and on this objection this issue was struck off. The management witness Shri Jagdish Lal, Head Clerk, O/O Labour Officer, Panipat, deposed that the workmen submitted their demand notices dated 20th November, 1979, which were Ex. MW-1/1. The workmen filed their demands through Shri Mukand Lal Chanana of Karnal. Conciliation proceedings were held and Shri Mukand Lal Chanana appeared on behalf of the workmen. A settlement was arrived at between the parties u/s 12(3) of the I.D. Act on 26th February, 1980, the photocopy of the same was Ex. MW-1/2. On Ex. MW-1/2 Shri Mukand Lal Chanana put his signatures as the authorised representative of the workmen and he himself put his signature as a witness. Shri Avinashi Ram signed on behalf of the employer. In his cross-examination the witness stated that Ex. MW-1/2 bore the signature of the Labour

Officer-cum-Conciliation Officer, Panipat. The signatures of the workmen representative Shri Mukand Lal Chanana appeared below the space provided for the signature of the workmen representative. The authority letter on behalf of the workmen in favour of the Shri Mukand Lal Chanana was not in the file. The settlement Ex. MW-1/2 was typed in his presence. He did not recollect whether or not the workmen concerned appeared on that day. He further gave out that it was not necessary there shall be two witnesses for a valid settlement under section 12(3) of the Act.

Shri Avinashi Ram also proved the settlement Ex. MW-1/2 and deposed that the same was arrived at in the course of conciliation proceedings and the settlement was typed in the office of the Labour Officer and the same was signed by him at Mark 'A'. Shri Mukand Lal Chanana put his signatures at Mark 'B' and the signature of the Labour Officer-cum-Conciliation Officer appeared at Mark 'C'. It was settled that the workmen will be taken on duty afresh and nothing was to be paid to them in respect of wages. The workmen did not report for duty. Notice Ex. MW-2/1 was sent to their representative Shri Mukand Lal Chanana and its A.D. receipt was Ex. MW-2/2. The copy of the notice was also sent to the Labour Officer and the A.D. receipt of the same was Ex. MW-2/3. No reply was received from the worker side. In his cross-examination Shri Avinashi Ram has stated that he attended the conciliation proceedings on number of occasions but no worker ever attended the proceedings except on Ram Gopal and Shri Mukand Lal Chanana appeared on their behalf. He admitted as correct that the letter Ex. W-1 and W-2 were received by him and further admitted that the worker had written letter to him that the settlement was not acceptable to them.

On the other hand the workers have stated in evidence that they had authorised Shri Mukand Lal Chanana during conciliation proceedings only upto the stage till the Conciliation Officer sent his report to the Labour Commissioner, Haryana, Chandigarh and the settlement Exhibit MW-1/2 was arrived after the report under section 12(4) was sent to Chandigarh and as such Shri Mukand Lal had no authority to make a settlement on their behalf. They had related a story that on 25th February, 1980 all of them alongwith one Shri Sukh Ram met Shri Avinashi Ram who told them that he would take them on duty and pay them the wages but the settlement was to be brought in writing before the Labour Officer-cum-Conciliation Officer, Panipat on 26th February 1980 and when they reached Panipat on 26th February, 1980 Shri Mukand Lal Chanana met them on the way and told them that he had signed a settlement as witness and if the terms of the settlement were acceptable to them they would see to that. They had further stated that 26th February, 1980 was not fixed in their case nor they had any notice of this date nor they had authorised Shri Mukand Lal Chanana for that date. The workman Shri Ram Gopal has stated in his cross-examination that the authority letter which was given in favour of Shri Mukand Lal Chanana did not have any such thing that it was meant only till the papers are sent to Chandigarh. He also gave out that he did not know what proceedings were conducted by the Labour Officer on the demand notice. He did not recollect that whether anything transpired between him and Shri Mukand Lal Chanana about his reaching Panipat on 26th February, 1980 on meeting him on 24th February, 1980. He further admitted that Ex. MW-1/2 was the same paper which was seen by him in the office of the Labour Officer. He further stated that on Ex. MW-1/2 there were signature of Shri Mukand Lal Chanana only and of none else. Only one paper was seen by them but there were four such papers upon which Chanana Sahib had signed but Chanana Sahib had not told them on how many papers he had signed nor he told them that he had signed on blank papers. They did not give anything in writing to the Labour Officer that the settlement was not acceptable to them nor they had given in writing that Chanana Sahib was not authorised by them to execute a settlement on their behalf. They denied as incorrect that they were required to report for duty under the settlement which was duly signed by their authorised representative but they did not join their duties on their own accord.

From these pieces of evidence it is amply proved that a settlement Ex. MW-1/2 was reached between the parties on 26th February, 1980 where in it was agreed that the workman shall resume their duties within a week but they did not report for duty. Notice MW-2/1 was sent to their authorised representative on 4th March, 1980 asking him to direct the workman to resume their duties and in the meantime the government referred the dispute for adjudication to this court vide its order dated 28th February, 1980. On receipt of copy of this order by the workmen through their representative Shri Mukand Lal Chanana they adopted on in different attitude and thought of getting the settlement cancelled as the same was not acceptable to them in order to grab back wages from the respondent management even without doing any labour for the same and from the evidence led before me I am fully convinced that this attitude has been adopted by the workmen at the instance of Sh. Mukand Lal Chanana who ill-advised them not to accept the terms of the settlement and even to go to the extent of denying him the authority to represent them who is in himself a blackmailer of Labour and other government department officials taking advantage of a newspaper edited and published by him at Karnal in the name of 'Bhukha Sharamik by publishing defamatory editorials against the officials. Shri Mukand Lal Chanana had been appearing throughout from the raising of the demand to the final stage of arguments in the present reference on these demands and he had not been able to muster the courage to appear in the witness box to say that he had no authority from the workmen when he signed the settlement Ex. MW-1/2 or he had only signed as a witness to the settlement or he had signed on a blank paper which was converted into the settlement. The letter Mark 'A' seems to be a forged one and is an afterthought and the same is dated 7th March, 1980 under the signature of the workmen which when compared to other signatures on the file do not seem to be genuine signatures of the workmen. The version of the workmen that the settlement Ex. MW-1/2

is not a settlement arrived at between them and the management as the same was reached behind their back. Shri Mukand Lal Chanana was not authorised by them to execute the same is not acceptable in view of the above discussion. I am therefore constrained to hold that the settlement was duly reached between the parties and the same was equally binding on the workmen and in view of the settlement when the workmen did not report for duty even when they were asked to do so,—*vide* letter Ex. MW-2/1 the reference become bad in law as the workmen themselves were not ready to abide by the terms of the settlement. The issue is accordingly decided in favour of the management.

In view of my findings on issue No. 1 the other issues need no decision. I answer the references and give my award that the references are bad in law and not maintainable in view of the settlement dated 26th February, 1980 and the workmen are not entitled to any relief while returning the same in these terms.

The 30th October, 1982.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

Endst. No. 2441, dated 9th November, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court Haryana, Rohtak.

No. 9(182-6-Lab/11624.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s S.D.O., Siwani Development Sub-Division No. 2, Siwani (Bhiwani).

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 56 of 81

between

SHRI UMED SINGH, WORKMAN AND THE MANAGEMENT OF M/S SUB-DIVISIONAL OFFICER,
SIWANI DEVELOPMENT SUB-DIVISION NO. 2, SIWANI (HARYANA)

Present :—

Shri S.S. Gupta for the workman.

Shri R. P. Gupta for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/HSR/13-81/13610, dated 19th March, 1981 under section 10(i)(c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Umed Singh, workman and the management of M/s Sub-Divisional Officer, Siwani Development Sub-Division No. 2, Siwani. The term of the reference was :—

Whether the termination of services of Shri Umed Singh was justified and in order ? If not to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance on 6th July, 1981 filed their respective pleadings, on the basis of which the only issue 'As per the term of reference' was framed and the management was asked to adduce their evidence. The management examined Shri R. P. Gupta, Junior Engineer as their only witness and closed their case on 9th March, 1982. The workman examined himself as his own witness and closed his case on 4th August, 1982. I heard the learned representatives of the parties and decide the issue as under.

MW-1. Shri R. P. Gupta deposed that the workman was working with the respondent as work-charge Beldar since 1972. The services of the workman were terminated,—*vide* order Exhibit MW-1/1. The services

were terminated on account of the post being surplus and the workman being the juniormost. In his cross-examination the witness has stated that he was not aware whether the workman was surplus or not. The service of the workman was terminated in accordance with the instructions contained in letter from the Chief Engineer. No compensation was paid to him and further stated that there was no such rule. He has further given out in his cross-examination that after the termination of the workman other persons have been employed on the same post. Their number was 3 to 4.

The workman has deposed that he had been working with the respondent for the last eight years. His services were terminated,—vide Exhibit W-1. He further stated that other persons were employed after his termination. Exhibit W-2 was the certificate given by the respondent. No notice, notice pay or retrenchment compensation was paid to him. The persons junior to him who were terminated along with him were again employed by the management. He denied as incorrect that he remained absent intermittently and admitted that he remained absent only on one day.

From the evidence of the parties it is evident that the workman had been working with the respondent for the last eight years. No service compensation was paid to him and his services were terminated on account of his being surplus. It is fully established that the termination was retrenchment and the provisions of section 25F which are mandatory are not fulfilled. The violation of these provisions renders the termination void *ab initio*. In consequence the workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

Dated the 30th October, 1982.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 2444, dated 9th November, 1982.

Forwarded (four copies). to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(1)82-6 Lab./11625.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Sub-Divisional Officer, Siwani Development Sub-Division No. 2, Siwani (Haryana).

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 57 of 1981

between

SHRI CHHABIL DASS, WORKMAN AND THE MANAGEMENT OF M/S. SUB-DIVISIONAL
OFFICER, SIWANI DEVELOPMENT SUB-DIVISION NO. 2,
SIWANI (HARYANA)

Present.—

Shri S.S. Gupta for the workman.

Shri R.P. Gupta for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/HSR/11-81/17362, dated 27th March, 1981 under section 10(i)(c) of the I.D. Act for adjudication of the dispute existing between Shri Chhabil Dass, workman and the management of M/s. Sub-Divisional Officer, Siwani Development Sub-Division No. 2, Siwani. The term of the reference was :—

“Whether the termination of services of Shri Chhabil Dass, was justified and in order ? If not, to what relief is he entitled ?”

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance on 6th July, 1981, filed their respective pleadings, on the basis of which the only issue "As per the term of references" was framed and the management was asked to adduce their evidence. The management examined Shri R.P. Gupta, Junior Engineer as their only witness and closed their case on 9th March, 1982. The workman examined himself as his own witness and closed his case on 4th August, 1982. I heard the learned representatives of the parties and decide the issue as under.

MW-1 Shri R.P. Gupta deposed that the workman was working with the respondent as workcharge Beldar since 1975. The services of the workman were terminated,—*vide* order Ex. MW-1/1. The services were terminated on account of the post being surplus and the workman being the junior most. In his cross-examination the witness has stated that he was not aware whether the workman was surplus or not. The services of the workman were terminated in accordance with the instructions contained in letter from the Chief Engineer. No compensation was paid to him and further stated that there was no such rule. He has further given out in his cross-examination that after the termination of the workman other persons have been employed on the same post. Their number was 3 to 4.

The workman has also deposed that his work and conduct was satisfactory since his appointment on 9th March, 1975. His services were terminated on 30th September, 1980. Other persons were engaged after his termination. No notice or notice pay and the retrenchment compensation was paid to him at the time of his termination. In his cross-examination he has stated that after one or two months of his termination some of the terminated employees were also taken back on duty and the new ones were also engaged. He denied as incorrect that he was employed in the year 1977.

From the evidence of the parties it is evident that the workman had been working with the respondent for the last 5 to 6 years. No service compensation was paid to him and his services were terminated on account of his being surplus. It is fully established that the termination was retrenchment and the provisions of section 25F which are mandatory are not fulfilled. The violation of these provisions renders the termination *void ab initio*.

In consequence the workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

BANWARI LAL DALAL,

Dated the 30th October, 1982.

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 2445, dated the 9th November, 1982.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(1) 82-6 Lab/11676.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Precision Metal Works (India) Pvt. Ltd., Railway Road, Gurgaon:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 236 of 1981

between

SHRI OM KAR SINGH, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S.
PRECISION METAL WORKS, (INDIA) PVT. LTD., RAILWAY ROAD, GURGAON

Present:—

Shri Mahabir Tiyaagi, for the workman.

Shri M. P. Gupta, for the respondent -management.

AWARD

This reference No. 236 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/GGN/84-81/45368, dated 4th September, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Om Kar Singh, workman and the respondent-management of M/s. Precision Metal Works (India) Pvt. Ltd., Railway Road, Gurgaon. The term of the reference was :—

Whether the termination of services of Shri Om Kar Singh was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties, on receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to his demand notice is that he joined the services as Milling Man and receiving the salary of Rs. 260 per month. He worked about seven months and he was retrenched without complying the provisions of Section 25-F of the Industrial Disputes Act on 6th May, 1981 due to union activities. It is victimisation and the workman is entitled for his reinstatement with continuity of service with full back wages.

The case of the respondent according to written statement is that the reference is bad in a law and the workman is estopped from raising this dispute as he has admitted the retrenchment as correct. The retrenchment order by the respondent is quite legal and the reference is not validly raised. The workman was appointed as Milling Man on 2nd January, 1981 and retrenched due to unavoidable circumstances, i.e., shortage of order and no other millingman was appointed after this appointment and the retrenchment was legal and justified.

On the pleadings of the parties, following issues were framed :—

- (1) Whether the termination of services of Shri Om Kar Singh was justified and in order? If not, to what relief is he entitled?

My finding on the issues is as under :—

Issue No. 1

The representative of the respondent argued on this issue as stated by Shri Desh Raj, Manager of the respondent as MW-1 the workman gave the application Exhibit M-1 for the Milling Man, dated 1st January, 1981 and he was appointed as Milling Man,—*vide* Exhibit M-2, dated 2nd January, 1981. There was a shortage of orders in the factory so the management decided to retrench surplus staff. The order of the retrenchment is Exhibit M-3. According to that order a final seniority list was prepared which is Exhibit M-4. The union raised the general demand notice on this retrenchment and there was a settlement under section 12(3) of the Industrial Disputes Act which is Exhibit M-5. The workmen were retrenched according to seniority list. The workman in his statement as WW-2 has admitted in his cross-examination that the appointment letter Exhibit M-2 bears his signature. He has also admitted that 10/12 workmen were retrenched according to the orders of the respondent and because the workman has only five months service on his credit so he was not entitled for retrenchment compensation and the retrenchment was illegally done by the respondent.

The representative of the workman argued on this issue that the workman was working in the factory before January, 1981 and he was asked to give the application for appointment so he gave the application Exhibit M-1 for regular appointment and appointment letter Exhibit M-2 was issued to him. He was appointed as permanent employee and a permanent employee cannot be retrenched without complying the mandatory provisions of Section 25-F of the Industrial Disputes Act. The respondent gave no individual notice to the workman giving the reason for his retrenchment. He was stopped at the gate without any notice and without any notice pay. The respondent also failed to comply the requisite of section 25-F of the Industrial Disputes Act. The respondent has not produced any notice in the prescribed manner to the appropriate Government without which the retrenchment is illegal. They have retrenched all persons illegally. He further argued that the respondent has not proved on the file that they have no work for these workmen who were retrenched. They should have proved in the court the reason of retrenchment. The respondent has simply stated in the written statement that these workmen were retrenched due to shortage of orders but not proved in the court the shortage of orders with the respondent. It is a pretext to remove the claimant because he was an active member of the union and it is a victimisation being a member of the union. The respondent displayed no seniority list of the workman for objection on the seniority list. He further argued that the respondent witness has admitted in his cross-examination that no individual notice for retrenchment was given to the workman and no notice pay was given. So the workman was retrenched and not retrenched according to law. He further argued that Shri Om Parkash a co-workman has come in the witness box as MW-1 and made the statement in favour of the workman. He has further stated that the workman was terminated and not retrenched. He was stopped at the gate without giving any notice or explanation which was illegal. It was the duty of the respondent to explain to the workman about his retrenchment. If the provisions of Section 25-F for the retrenchment is not complied with the retrenchment is bad so in this case retrenchment is bad due to non-compliance of this section. So he was removed without any reason and the workman is entitled for his reinstatement with continuity of service and back wages.

After hearing the arguments of both the parties and going through the file, I am of the view that the respondent has not fully complied with the provision of section 25-F of the I.D. Act for retrenchment as they have not issued any notice to the claimant for retrenchment. No notice on form 'P' was sent to the Government for retrenchment, and no seniority list was displayed on the notice Board for the objection of the employees, which is mandatory provisions without which no retrenchment is legal. So the workman was wrongly retrenched and he was terminated. So the workman is entitled for his reinstatement with continuity of service and with half back wages. This be read in answer to this reference.

Dated the 3rd November, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 2325, dated the 10th November, 1982

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)-82-6 Lab/11679.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s. Aval Scales Industries Private Limited, Plot No. 44, Sector 27-C, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 214 of 1981

between

SHRI LALA RAM SHARMA, WORKMAN AND THE RESPONDENT-MANAGEMENT OF
M/S. AVAL SCALES INDUSTRIES PRIVATE LIMITED, PLOT NO. 44, SECTOR 27-C, FARIDABAD

Present :—

Shri M.K. Bhandari, for the workman.
Shri G.S. Chaudhary, for the management.

AWARD

This reference No. 214 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/7/81/35817, dated 30th July, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947 existing between Shri Lala Ram Sharma, workman and the respondent management of M/s. Aval Scales Industries Private Limited, Plot No. 44, Sector 27-C, Faridabad. The terms of the reference was :—

Whether the termination of services of Shri Lala Ram Sharma was justified and in order ? If not, to what relief is he entitled ?

On receipt of order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workman according to the demand notice is that he joined the services of the respondent on 28th November, 1977 as Drill Operator and was getting salary of Rs 275 per month. He was working properly without any complaint and the respondent was satisfied with his work. There was a union in the factory which was straw in eye of the respondent. The respondent locked out the factory on 18th February, 1980. The union reported the matter to the Labour Department and raised the general demand notice. The respondent did not recognise the union in the factory and on this again the general demand was raised on 3rd March, 1982 to recognise the union and also accepted the other demand of the union. On 1st August, 1980 the respondent stopped the claimant at the gate without any notice and did not allow to enter in the factory. The respondent took the plea of retrenchment but no retrenchment notice was given to the claimant and no other formalities of the retrenchment was performed by the respondent. He was not paid any retrenchment compensation or notice pay which is mandatory provisions of section 25-F of the Industrial Disputes Act. So he was retrenched without any reason and he is entitled to his reinstatement with continuity of service and back wages.

The case of the respondent according to written statement is that the Government has wrongly referred this case because they have rejected the demand notice of the workman on the basis of the retrenchment. The union was very much existed in the factory and the respondent was not unhappy on the constitution of union. There was no lock out in the factory and violated no condition of any settlement. The respondent retrenched eight

workmen according to the provisions of the Industrial Disputes Act and all legal formalities were full-filled. The retrenchment was done due to dispute in the union, short of material and lack of orders and funds. All other workmen taken their full and final at the time of retrenchment and the claimant refused to take his legal dues. So it is a case of retrenchment and the claimant was never terminated.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether the termination of services of the workman is proper justified and in order ? If not, to what relief is he entitled ?

My findings on the issue is as under. :—

Issue No. 1.—The representative of the respondent argued on this issue that the claimant was a workman in the factory and joined the services on 28th November, 1977. As per seniority list Ex. M-2 he was working as Drill Operator and receiving the salary of Rs. 275 per month, as stated by Shri H.S. Sidhana, Managing Director of the respondent factory. There was a shortage of orders in the month of January, 1980 and there was a dispute in the partners and due to this dispute the bank operation were stopped and there was a civil suit between the management directors. The dispute remained upto February, 1980 and the respondent paid the salary to the workers without any work in this period because of the above reasons, the management decided to retrenched the surplus staff and seniority list was prepared which is Ex. M-1. The copies of the seniority list were sent to the Labour Officer vide Ex. M-2. There was no objection on the seniority list of the workers. The notice were also given to the workers for the retrenchment. The claimant refused to receive the notice. The claimant was also offered retrenchment compensation at the time of retrenchment but he refused to accept the same. The notice was sent through registered post which is Ex. M-3 which came back un-delivered. Ex. M-4 are the receipts of the registered letters. The other workers took their full and final at the time of retrenchment but this claimant refused to take his full and final accounts. The Government rejected the demand of this claimant which is Ex. M-6. The Government gave no opportunity to the respondent for referring the case in the court. The respondent sent the 'P' form to the Government which is Ex. M7 so this workman was retrenched and all formalities for retrenchment were observed at the time of retrenchment. The respondent have not employ any other person in his place and it was done in the good intension of the respondent to run the factory. So the reference is bad in law and may be rejected.

The representative of the workman argued on this issue that the workman joined the services of the respondent on 28th November, 1977 as Drill Operator as stated by the workman in his statement as WW-1. There was a union in the factory and the claimant was the General Secretary of that Union. The respondent did not want the union in the factory and they victimised the members and office bearers of the factory. There was a election of the union, and the copy of election was sent to the respondent,—vide Ex. W-2. Previously the respondent did not recognise the union on which the union raised the general demand notice and the same was decided by the Labour Department and the respondent admitted the general demand notice of the union,—vide Ex. W-1 in which they have recognise the union. They accepted the demand to reinstate Shri Subedar Singh with his continuity of service and also accepted that there will be no retrenchment in future. The settlement was made on the intervention of the Deputy Labour Commissioner, Faridabad. The union sent the letter Ex. W-3 to the Deputy Labour Commissioner for this purpose which is signed by the claimant, and they received the letter Ex. W-4. They also sent a letter Ex. W-5 to Labour Inspector for the wrongfull activities against the workman in the factory. He further argued that the respondent witness MW-1 who is Managing Director has admitted in his statement that there was a dispute from January, 1980 which was ended in the month of February, 1980 and there was a settlement between the parties as Ex. W-1. In Ex. W-1 the respondent has admitted that in future there will be no retrenchment but to victimise the claimant they take the plea of the retrenchment in the month of August, 1980 to remove the claimant from service. The respondent has not completed the provisions of section 25-F of the Industrial Disputes Act for the retrenchment. They displayed no seniority list on the notice board of the factory for any objection from the workmen and also offered no compensation for retrenchment and notice pay which was mandatory provisions of section 25-F of the Industrial Disputes Act without which no retrenchment can be valid in the eye of law. The respondent have failed to prove in the court the cause of retrenchment. They have simply stated that there was a shortage of orders and work in the factory so they retrenched the claimant but the respondent witness has also admitted in his statement and in the seniority list that there is only Drill Operator in the factory which cannot be retrenched because there was no other man to work as drill operator. It shows that it was done only to victimise the claimant. Simply stating in the written statement and in the statement of the witness that there was a surplus staff due to shortage of orders is not enough without showing in the court the production of normal time and the time of crises without which it is not proved that there was a crises in the factory due to these facts. The respondent again not proved in the Court that they offered the money to the claimant and he refused. Only one witness of the respondent produced who has stated in the court that the workman refused. His statement was not corroborated by any workman. So it can not be believed. The claimant was no offered any money for retrenchment or notice pay. No money order was sent to the workman, even after the retrenchment. So the mandatory provision of Section 25-F were not complied with so he was not retrenched but terminated which is illegal and without any reason. So he is entitled for his reinstatement with continuity of services and back wages.

After hearing the argument of both the parties and going through the file, I am of the view that the respondent has failed to prove the case in the court that the workman was retrenched in accordance with the provisions of Section 25-F of the Industrial Disputes Act. No notice for retrenchment was given to the workman and no retrenchment compensation was offered at the time of removal which are mandatory provisions of Section 25-F of the Industrial Disputes Act without which no retrenchment can be valid. Moreover the claimant was only drill operator in the factory without drill operator the work of the factory cannot work properly. The respondent has accepted the general demands of the workers,—vide Ex. W-1 in which they have clearly accepted that there will be no retrenchment in future. This was done in the month of March, 1980 and retrenchment was made after five months of this agreement and settlement between the parties. This clearly shows that it was due to some mis-understanding between the parties. So, the removal was not justified and in order and the workman is entitled for his, reinstatement with full back wages and continuity of service.

This be read in answer to this reference.

Dated the 5th November, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endstt. No. 2328, dated 10th November, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-6Lab/11686.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of Municipality Panipat.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 202 of 79

Between

SHRI RAM KUMAR, WORKMAN AND THE MANAGEMENT OF M/S MUNICIPALITY,
PANIPAT

Present:—

Shri Ram Kumar, workman in person.

Shri S. Kaushal, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/KNL/43-79/48644, dated 16th November, 1979 under-section 10(1)(c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Ram Kumar, workman and the management of M/s Municipality, Panipat. The terms of the reference was :—

“Whether the termination of services of Shri Ram Kumar was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance in response to the same, filed their respective pleadings, on the basis of which the following issue was framed :—

“Whether the termination of the services of the workman is justified and in order ? If not, to what relief is he entitled ?”

The management examined Shri Dharam Vir, Secretary respondent management as their witness and closed their case on 21st May, 1980. The workman examined himself as his witness and closed his case on 7th August, 1980. The parties obtained several adjournments for addressing their arguments. I heard the arguments and decide the issue as under :—

MW-1 Shri Dharam Vir deposed that Shri Ram Kumar was issued appointment order as Fireman, Ex. M-1. The requisition of the Employment Exchange was also sent,—vide Ex. M-2. The Employment Exchange forwarded the name of candidates but the name of the workman was never recommended. The services of the workman were dispensed with after a period of three months on the basis of an application, Ex. M-3. He was again appointed,—vide order Ex. M-4 for a period of three months. The workman again applied after the expiry of three months period,—vide application, Ex. M-5. He was again engaged for the period of 3 months from 7th March, 1978 to 6th June, 1978. A letter of the Deputy Commissioner was received which is Ex. M-6 which was duly replied,—vide Ex. M-7. After the expiry of the period on 6th June, 1978 the services of the workman automatically came to an end. His name was never recommended or forwarded by the Employment Exchange. Ex. M-8 was the copy of the resolution for appointment of the workman from 7th March, 1978 to 6th June, 1978. In his cross-examination the management witness stated that the first letter of appointment issued to the workman was, dated 3rd September, 1977. One Shri Ishwar Singh was engaged after dispensing with the services of the workman but he was engaged through Employment Exchange. He further gave out that no information was sent to the Employment Exchange for engaging *ad hoc* persons. Shri Dharam Vir further stated that the workman had not completed 240 days of continuous service and services of the applicant automatically came to an end in terms of his letter of appointment.

The workman has deposed that he worked with the respondent from 3rd September, 1977 to 6th June, 1978. His services were terminated without giving any notice, notice pay or retrenchment compensation. He was not paid his other dues also. He admitted in his cross-examination that he was appointed,—vide Ex. M-1 and, he was not appointed through the Employment Exchange. He further admitted that he was told at the time of his appointment that he was appointed till someone sent through the Employment Exchange was appointed. He further admitted that his name was not forwarded by the Employment Exchange till the termination of his services. He admitted that the application Ex. M-3 was submitted by him and similarly Ex. M-5 was also submitted by him and on the basis of these applications he was re-employed up to 6th June, 1978 for three months at each time and after 6th June, 1978 he was not allowed to continue. He further admitted that he was finally appointed on 7th March, 1978 for a period of three months.

From the evidence of the parties it is established that the workman has worked from 3rd September, 1977 to 6th June, 1978 with a break of three days from 3rd December, 1977 to 5th December, 1977 and with a further break of one day on 6th March, 1978 and these breaks cannot be attributed to any act or omission on the part of the workman. The total days for which the workman has been in the employment comes to 272 days which is uninterrupted and as such continuous service and the same is within twelve calendar months preceding the date of reference i.e. 6th June, 1978 from which the days are to be counted. The workman has deposed that his services were terminated without any notice or without paying any notice pay or retrenchment compensation. The workman has not been touched on this point by the management in his cross-examination. Whatever be the terms of appointment when the workman has completed 240 days and more of continuous service within twelve calendar months he is entitled to retrenchment compensation as provided in section 25F(b) of the Industrial Disputes Act though the provisions of section 25F(a) can be dispensed within the present case as the appointment was for a fixed term. There is violation of the mandatory provisions of section 25F(b) and the same is fatal of the termination of the workman and as such the termination is not only unjustified and wrongful but void ab initio. The workman is entitled to reinstatement with continuity of service and with full back wages. During the course of arguments, it has also been brought to my notice that the workman was re-employed on the same post by the management from 20th April, 1981 to 28th July, 1982 and on the ground of his being gainfully employed he is not entitled to his back wages for the above-said period. The reference is answered and returned accordingly.

BANWARI LAL DALAL,

The 9th November, 1982.

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 2462, dated 10th November, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.